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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,320	05/23/2007	Michiel Christiaan Rombach	3135-062156	6948

28289 7590 01/27/2010  
THE WEBB LAW FIRM, P.C.  
700 KOPPERS BUILDING  
436 SEVENTH AVENUE  
PITTSBURGH, PA 15219

EXAMINER
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BOOTH, MICHAEL JOHN

ART UNIT	PAPER NUMBER
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3774

MAIL DATE	DELIVERY MODE
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01/27/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/589,320

Applicant(s)

ROMBACH, MICHIEL  
CHRISTIAAN

Examiner

MICHAEL J. BOOTH

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments with respect to claims 13-24 have been considered but are moot in view of the new ground(s) of rejection. Examiner notes that an amendment particularly pointing out the differences from the prior art (specifically Alvarez, as discussed below) *may* overcome the rejection. An amendment to the claims *may* require further consideration.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 13-24 rejected under 35 U.S.C. 103(a) as being unpatentable over Alvarez USPN 3,305,294 in view of Tillay USPN 4,666,445.**

**With respect to claim 13;** Alvarez discloses the invention substantially as claimed. Alvarez specifically discloses two lens elements arranged in tandem, movable

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in a direction transverse to the optical axis **c1:L65-72** further with an asymmetrical surface, as apparent in **figure 12**, further with a thickness that varies **c3:L24-25**. Alvarez further discloses haptics **13/14** connected to a connecting anchor **15/16**. Alvarez focuses on the haptics being elastic or flexible **c10:L5-33** and is silent with respect to having one elastic and one non-elastic haptic. Tillay teaches the importance of having greater stability at a haptic-optic connection for the purpose of being less subject to displacement and shifting from side to side, further with at least one flexible haptic connected to the lens body **c3:L25+**. Tillay further elaborates desirability of having a rigid material at a haptic/optic junction **c2:L36-39**. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the lens of Alvarez, to have a rigid haptic at an optic/haptic junction, as suggested by Tillay, for the purpose of improving stability and preventing unwanted movement.

**With respect to claim 14;** it has been held that it is obvious to rearrange parts, see MPEP 2144.04 VI C.

**With respect to claim 15;** non-elastic or rigid haptics are in fact fixed, as broadly interpreted. They are fixed to the optic at the optic/haptic junction.

**With respect to claim 16;** Alvarez discloses a "saddle-shaped surface" as apparent in the figures.

**With respect to claim 17;** the connecting anchor is adapted to be connected to a part of the capsular bag of the eye, it's merely intended use.

**With respect to claim 18;** the lens of Alvarez in view of Tillay may be adjusted to set the desired movement capabilities or resting positions. *Furthermore*, it has been

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held that optimizing the size of the device is obvious to one of ordinary skill in the art and well within the technical skill to do so, where it may be desirable.

**With respect to claim 19;** the lens of Alvarez may be used to correct a disorder of the eye, as it's merely functional.

**With respect to claims 20, 21;** having an accommodating or non-accomodating lens is well known in the art and an obvious design choice, where it may be desirable for the patient, as it's well known in the art. *Examiner will provide evidence upon request.*

**With respect to claims 22, 23;** having a diffractive structure according to the Gradient Index (GRIN) principle is an obvious design choice and well known in the art. *As evidence,* Ho et al USPN 7,060,095 discloses lens having diffractive structure and Gradient Index **c12:L55 - c13:L2**, as it is a mere obvious design choice, where it may be desirable. Examiner *further* notes that it is well within the technical skill (and obvious) to optimize the device with having diffractive structures and Gradient Index, as it's commonly known in the art, for the purpose of benefiting the patient.

**With respect to claim 24;** the idea of the lens by Alvarez is to change powers when rotated or moved, it's merely functional.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. BOOTH whose telephone number is (571) 270-7027. The examiner can normally be reached on Monday thru Thursday 9:00am - 7:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David J. Isabella can be reached on (571) 272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Booth/

Examiner, Art Unit 3774

January 13, 2010

/DAVID ISABELLA/

Supervisory Patent Examiner, Art Unit 3774